

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**M.P., Appellant**

**and**

**DEPARTMENT OF LABOR, OCCUPATIONAL  
SAFETY & HEALTH ADMINISTRATION,  
Pittsburgh, PA, Employer**

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**Docket No. 08-1009  
Issued: October 6, 2008**

*Appearances:*

*Gordon Reiselt, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 19, 2008 appellant filed a timely appeal of the February 1, 2008 merit decision of the Office of Workers' Compensation Programs, which affirmed the denial of her claim for an employment-related emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether appellant sustained an emotional condition in the performance of duty.

**FACTUAL HISTORY**

On May 19, 2006 appellant, then a 47-year-old safety specialist, filed an occupational disease claim for employment-related post-traumatic stress disorder (PTSD). She identified April 24, 2006 as the date of injury and when she first realized her emotional condition was employment related. Appellant attributed her condition to fear of being reinfected with Lyme

disease. On April 20, 2006 she was allegedly bitten by a tick while at a construction job site.<sup>1</sup> Appellant also attributed her PTSD symptoms to various accident scene investigations she conducted dating back to 1990.

In a June 26, 2006 statement, appellant identified more than 60 work-related inspections she was involved in between 1990 and 2006. She explained that in 1990 she witnessed the extrication of an employee who had been buried alive in a trench. Appellant said she never forgot the moment when the deceased employee's remains were carried out on a stretcher in front of her. Since that first incident, she claimed to have regularly experienced severe stomach nausea and internal panic each time there was a report of a severe accident or fatality that she might have to investigate. Appellant described her involvement in numerous investigations where employees either died or were seriously injured. She noted incidents where employees fell from cranes, bridges and down elevator shafts. Appellant also described incidents where employees were run over by trucks and bulldozers and one incident where an employee was decapitated by a moving railroad car. She claimed to have conducted 878 inspections.

In a report dated June 26, 2006, Dr. Mildred D. Lane, Ed.D., a professional counselor, diagnosed PTSD.<sup>2</sup>

In a decision dated September 5, 2006, the Office denied appellant's emotional condition claim. It found that appellant had not established any compensable employment factors.

Appellant requested a hearing, which was held on March 20, 2007. She submitted the September 16 and October 21, 2006 psychological evaluation of Paul M. Bernstein, Ph.D., Director, Pennsylvania Psychological Services, who diagnosed adjustment disorder with mixed anxiety and depressed mood. Dr. Bernstein noted that appellant was currently being treated for emotional distress caused by her workplace experiences. He explained that, as a safety specialist, appellant had investigated hundreds of accidents, some gruesome. While appellant remained spontaneous, warm and outgoing, the cumulative impact of the situations she investigated had sensitized her. Dr. Bernstein further indicated that appellant was unable to tolerate more such incidents and that she had become a victim to the traumatic events. He surmised that appellant's continued exposure to such experiences would likely result in her development of PTSD. Dr. Bernstein stated that, while appellant was still suitable for full-time employment, it was imperative that her job responsibilities be changed. He noted that, while appellant was free of serious mental disorder, unless changes were made in her work situation, she may develop PTSD.

By decision dated June 1, 2007, the hearing representative affirmed the Office's decision denying appellant's emotional condition claim, as modified. She found that appellant established a compensable factor of employment, specifically, her participation in accident investigations.

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<sup>1</sup> Appellant had a prior history of Lyme disease dating back to at least 2002. She had recently filed a separate claim for Lyme disease, with an April 20, 2006 date of injury (file number 11-2034089). The Office advised appellant that she should pursue the Lyme disease aspect of the present claim under file number 11-2034089.

<sup>2</sup> According to her letterhead, Dr. Lane has a doctorate in education (Ed.D.,) is a national certified counselor and a licensed professional counselor.

The hearing representative explained that investigation of accidents constituted a compensable factor as it was a part of appellant's regular job activities. It was not necessary that appellant witness the event or the aftermath.

Having determined that appellant established a compensable employment factor, the hearing representative found that Dr. Lane's June 26, 2006 diagnosis of PTSD was not probative because as a licensed professional counselor, she was not a physician as defined under the Federal Employees' Compensation Act. With respect to Dr. Bernstein's reports, the hearing representative noted that he had not diagnosed PTSD, but addressed the likelihood of appellant developing this condition in the future. The hearing representative noted that Dr. Bernstein diagnosed adjustment disorder with mixed anxiety and depressed mood. However, his report did not address this condition as being work related. The hearing representative found that appellant failed to establish that she sustained a medical condition as a result of the accepted employment factors.

Following the hearing representative's June 1, 2007 decision, the Office received more than 200 pages of documents regarding seven specific fatality investigations in which appellant participated.

On September 26, 2007 appellant's counsel requested reconsideration and referenced a report from Joseph Greenberg, Ph.D., a psychologist. However, no such report was received at that time.

In a merit decision dated January 2, 2008, the Office denied modification of its prior decision. It reviewed the documentation regarding appellant's participation in various fatality investigations. However, the issue was not whether appellant had established a compensable employment factor, but whether a medical condition had been diagnosed in connection with her employment exposure. As no new medical evidence was submitted the Office denied modification of the hearing representative's June 1, 2007 decision.

Counsel filed another request for reconsideration on January 11, 2008. This latest request was accompanied by an undated report from Dr. Greenberg, who diagnosed employment-related PTSD. Dr. Greenberg indicated that he initially evaluated appellant on March 14, 2007 and had since seen her on five separate occasions, most recently on August 1, 2007. At the outset, appellant reported that her work with the employing establishment exposed her to multiple traumatic events over the years, resulting in a significant level of distress. Dr. Greenberg noted that appellant had previously sought treatment for her work-related difficulties with Dr. Lane, to whom she had been referred by the Employee Assistance Program. Appellant advised Dr. Greenberg that her sessions with Dr. Lane were helpful, but nonetheless she had continued to experience intense symptoms of anxiety, exacerbated by ongoing work conditions, which interfered with her functioning.

Dr. Greenberg stated that while performing her job appellant was routinely confronted with events that could be readily classified as traumatic. He further noted that, as an investigator of industrial accidents, appellant was required to visit worksites where workers had suffered significant injuries or death. Dr. Greenberg explained that the events appellant witnessed were often gruesome in nature and the cumulative impact appeared to have taken a significant toll on

her emotional functioning. He also noted that appellant had endured multiple threats to her own safety during worksite visits. According to Dr. Greenberg, appellant reexperienced these traumatic events in several ways, including nightmares, spontaneous and distressing recollections of events and intense psychological distress upon exposure to cues that resemble aspects of the events. He also noted that appellant sought to avoid stimuli associated with the traumatic events and she was clearly distressed when asked to describe the events. Additionally, appellant had symptoms of increased psychological/emotional arousal, including difficulty falling and staying asleep and difficulty concentrating. Dr. Greenberg noted that he had spoken with Dr. Lane, who reportedly provided further substantiation of appellant's symptoms and their cause. He explained that, based on the reported data, appellant presently met the criteria for the diagnosis of chronic PTSD. Dr. Greenberg recommended that appellant continue to receive treatment of her symptoms. He also stated that continued exposure to traumatic stress through appellant's job duties would likely exacerbate her symptoms to a significant degree. As such, Dr. Greenberg recommended that appellant discontinue onsite visits to workplace-related accidents and fatalities.

By decision dated February 1, 2008, the Office denied modification. It found that Dr. Greenberg's report was not credible for a number of reasons. First, the Office believed the doctor's discussion of appellant's employment exposure was too general. It stated that Dr. Greenberg did not appear to have based his opinion on a complete and accurate factual history of events. Additionally, the Office noted that Dr. Greenberg only generalized appellant's symptoms and their cause. Lastly, it stated that Dr. Greenberg did not provide a detailed description of his findings to support the diagnosis of PTSD.

### **LEGAL PRECEDENT**

To establish that she sustained an emotional condition causally related to factors of her federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition is causally related to the identified compensable employment factors.<sup>3</sup>

### **ANALYSIS**

The Board finds that the case is not in posture for decision. Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.<sup>4</sup> Dr. Greenberg diagnosed employment-related PTSD and specifically related this diagnosis to appellant's work activities. Dr. Greenberg explained that the events appellant witnessed were often gruesome in nature and the cumulative impact affected her emotional functioning. He also noted that appellant had endured multiple threats to her own safety during worksite visits and that the psychological

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<sup>3</sup> See *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>4</sup> *William J. Cantrell*, 34 ECAB 1223 (1983).

effect was that she reexperienced these traumatic events in several ways, including nightmares, spontaneous and distressing recollections of events and intense psychological distress upon exposure to cues that resemble aspects of the events. The Office challenged Dr. Greenberg's diagnosis of appellant's condition, but Dr. Greenberg explained that he had considered appellant's symptoms and the possible cause of her symptoms in diagnosing her condition as PTSD. Although Dr. Greenberg's opinion is insufficient to discharge appellant's burden of proving that the claimed emotional condition is causally related to her federal employment, this evidence is sufficient to require further development of the case record by the Office.<sup>5</sup> On remand, the Office should refer appellant to an appropriate specialist, along with the case record and a statement of accepted facts. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

### **CONCLUSION**

The case is not in posture for decision.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the February 1, 2008 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this decision.

Issued: October 6, 2008  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>5</sup> See *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).